

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

FEB 01 2006

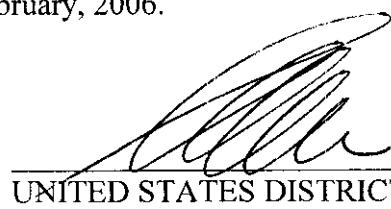
JOHN F. CORCORAN, CLERK
BY: *J. F. Corcoran*
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JEFFREY LEE GRAY, <u>et al.</u>)	
Plaintiff,)	Civil Action No. 7:04-CV-00634
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
GENE JOHNSON, <u>et al.</u> ,)	By: Samuel G. Wilson
Defendants.)	United States District Judge

Plaintiffs, a group of Virginia inmates proceeding pro se, brought this 42 U.S.C. § 1983 action, claiming that prison officials violated their First Amendment rights by compelling participation in the Therapeutic Community Program (TCP) at Botetourt Correctional Center (BCC), which the plaintiffs claim incorporates religious elements in violation of the Establishment Clause. The matter is before the court on the defendants' motion for summary judgment. The court referred the matter to the United States Magistrate Judge for a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge recommended that the court grant the motion for summary judgment, finding that the defendants were entitled to qualified immunity and, moreover, that any religious references in the TCP program did not violate the Establishment Clause. The plaintiffs timely filed objections to the Magistrate Judge's Report and Recommendation. The court finds that there are factual ambiguities as to how prison officials have run and continue to run the program as well as the role of religion in the program; rather than adopt the Report and Recommendation, the court orders an evidentiary hearing to resolve these factual ambiguities. Accordingly, the court denies the defendants' motion for summary judgment and orders an evidentiary hearing.¹

¹On September 12, 2005, the plaintiffs filed a motion to amend and an amended complaint. The court has reviewed the proposed amended complaint, and, finding that it is merely a reorganized listing of allegations already made and that it features no new allegations,

ENTER: This 1st day of February, 2006.



UNITED STATES DISTRICT JUDGE

the court denies the plaintiffs' motion to amend.